

**NEW YORK STATE  
DIVISION OF HUMAN RIGHTS**

**NEW YORK STATE DIVISION  
OF HUMAN RIGHTS**

on the Complaint of

**JULIE ORTON,**

Complainant,

v.

**RONALD WOEHLING,**

Respondent.

**NOTICE AND  
FINAL ORDER**

Case No. 10100563

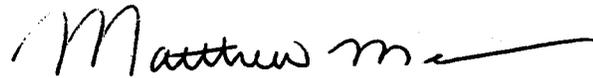
**PLEASE TAKE NOTICE** that the attached is a true copy of an Order issued by Matthew Menes, Adjudication Counsel, as designated by Kumiki Gibson, Commissioner of the New York State Division of Human Rights (“Division”), after a hearing held before Margaret Jackson, an Administrative Law Judge of the Division. In accordance with the Division's Rules of Practice, a copy of this Order has been filed in the offices maintained by the Division at One Fordham Plaza, 4th Floor, Bronx, New York 10458. The Order may be inspected by any member of the public during the regular office hours of the Division.

**PLEASE TAKE FURTHER NOTICE** that any party to this proceeding may appeal this Order to the Supreme Court in the County wherein the unlawful discriminatory practice that is the subject of the Order occurred, or wherein any person required in the Order to cease and desist from an unlawful discriminatory practice, or to take other affirmative action, resides or transacts business, by filing with such Supreme Court of the State a Petition and Notice of Petition, within sixty (60) days after service of this Order. A copy of the Petition and Notice of Petition must also be served on all parties, including the General Counsel, New York State Division of Human

Rights, One Fordham Plaza, 4th Floor, Bronx, New York 10458. Please do not file the original

Notice or Petition with the Division.

DATED: September 26, 2007  
Bronx, New York



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Adjudication Counsel

TO:

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**STATE OF NEW YORK  
DIVISION OF HUMAN RIGHTS**

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on the Complaint of

**JULIE ORTON,**

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v.

**RONALD WOEHLING,**

Respondent.

**SUMMARY**

Respondent discriminated against Complainant based on her sex, in violation of N.Y. Exec. Law, art. 15 ("Human Rights Law"), when he denied her housing due to her pregnancy. Complainant is entitled to \$20,000 for her mental anguish, \$10,000 in punitive damages and out-of-pocket expenses in the amount of \$2,970.95.

**PROCEEDINGS IN THE CASE**

On July 9, 2004, Complainant filed a verified complaint with the State Division of Human Rights ("Division"), charging Respondent with unlawful discriminatory practices related to housing in violation of the Human Rights Law.

After investigation, the Division found that it had jurisdiction over the complaint, and that probable cause existed to believe that Respondent had engaged in unlawful discriminatory practices. The Division thereupon referred the case to public hearing.

After due notice, the case came on for hearing before Margaret A. Jackson, an Administrative Law Judge ("ALJ") of the Division. Public hearing sessions were held May 23 and 24, 2007.

Complainant and Respondent appeared at the hearing. The Division was represented by Karen J. Draves, Esq. Respondent was represented by William R. Hites, Esq.

Permission to file post-hearing briefs was granted. Post-hearing briefs were timely filed.

On August 6, 2007, ALJ Jackson issued a recommended Findings of Fact, Decision and Opinion, and Order ("Recommended Order"). On August 9, 2007, ALJ Jackson issued an Amended Recommended Order. Objections to the Amended Recommended Order were received by the Commissioner's Order Preparation Unit from Respondent's attorney.

### **FINDINGS OF FACT**

1. Complainant alleged that Respondent discriminated against her based on her sex when he denied her housing due to her pregnancy. (ALJ's Exhibit 1)
2. Respondent denied the allegations. (ALJ's Exhibit 1)
3. In 2003, Complainant, a female who was six months pregnant, began looking for an apartment in the Kenmore area of Buffalo, New York. (Tr. 9)
4. On August 5, 2003, Complainant found Respondent's listing for an apartment located at 171 Shepard Street. Complainant went to see the apartment the following day. It was a large apartment, with a dining room and amenities, that included a garage and laundry area. Respondent had Complainant complete a rental application after she told him that she definitely wanted the apartment. (Tr. 10-11)
5. The only reason Complainant did not sign a lease that same day was because Respondent did not have one in his possession. However, Complainant and Respondent made an arrangement to meet on August 30, 2003, to execute a lease and hand over the keys. (Tr. 13, 129)

6. Complainant gave Respondent two checks as the security deposit for a one-year lease agreement. One check was in the amount of \$275 dated August 6, 2003; a second check was post-dated for August 13, 2003, to cover the balance due which was \$250. Respondent subsequently cashed both checks. (Tr. 127)

7. Complainant gave her landlord notice that she was moving and hired movers for September 1, 2003. She also contacted the utility companies to arrange to have her utilities turned on. (Tr. 14)

8. On August 30, 2003, Respondent took Complainant on a walk-through of the apartment. Complainant found that that the apartment was in excellent condition, despite the peeling paint on the hallway wall and a "problem neighbor" that Respondent mentioned. (Tr. 15, 124, 184-85)

9. Respondent gave Complainant two copies of the lease agreement, which she signed. She was also given a lead-based paint disclosure agreement. (Tr. 137) Respondent explained that her signature and initials on the lead-based paint agreement were required by law. Complainant signed the lead-based paint agreement, but did not initial the rider. (Tr. 17, 71-73; Respondent's Exhibit A)

10. After a second review of the lease, Complainant noticed that it stated that "the premises shall be occupied by one tenant only." At that point, Complainant jokingly said, "obviously in a few months there is going to be a new addition," because she was six months pregnant. (Tr. 19, 130, 159)

11. Respondent noted that she said the apartment was only for one person on her application. He then proceeded to tell her that the elderly neighbors would not like to hear noise

or a baby crying. He also stated that the "problem neighbor" would call Child Protective Services ("CPS") to report her, and CPS would take her baby. (Tr. 20)

12. Complainant became very nervous because she did not know CPS procedures. (Tr. 21)

13. Complainant asked Respondent if she could sign a six-month lease until she found another apartment. Respondent refused. (Tr. 139) Respondent stated that he did not want to sign a lease for less than one year because he considered such tenants transient. (Tr. 190)

14. Complainant asked Respondent if he had other properties that would be more suitable to her situation as an expectant mother. He told her that he was renovating his mother's house but it was not ready for occupancy. Complainant then told him that the movers were at her old apartment and she did not have anywhere to go. Complainant asked whether she could stay in the apartment for a week because she had no family in Buffalo. (Tr. 23)

15. Respondent offered her the use of his garage to store her belongings. However, Complainant called him later that day to inform him that she was not moving her belongings into his garage. (Tr. 23, 83)

16. When Complainant asked for her security deposit back, Respondent told her that he would only return her security deposit in full if he could rent the apartment for September 1, 2003. (Tr. 24) After several telephone calls, Complainant and Respondent agreed on the terms for reimbursement of her security deposit and signed a handwritten note to that effect. (Tr. 25)

17. Meanwhile, the mother of Complainant's friend was on her way to the Shepard Street apartment to help her unpack. When Complainant told her what had happened, she told her to move her belongings into her garage instead of Respondent's. Complainant did so and began to look for another apartment. A couple of days later, Complainant found another apartment on Garnet Road, in the Amherst section of Buffalo. (Tr. 28; Complainant's Exhibit 1)

18. On August 31, 2003, Complainant called Respondent four times demanding the return of her security deposit. (Tr. 150-51)

19. Complainant signed a lease for another apartment on September 1, 2003, and moved in September 4, 2003. The rent for that apartment was \$575 per month, and it did not have a garage or a dining room. Complainant remained at that apartment for three and one-half years, until she moved to Florida in February of 2007. (Tr. 30, 54)

20. On September 4, 2003, Complainant made arrangements to meet Respondent to get her security deposit back. (Tr. 40) When Respondent met Complainant, he brought a check in the amount of \$525, as reimbursement for her security deposit, and a note stating that the matter was settled in full. However, Complainant refused to sign the note and walked away without the check. (Tr. 41, 63)

21. Complainant paid \$250 to move her belongings to the Garnet Road apartment. (Tr. 35) Complainant expended an additional \$95.95 in out-of-pocket expenses for garbage bags and bins for her move. (Tr. 43-44; Complaint's Exhibit 3)

22. Complainant described herself as being an "emotional mess" for a while after she was unable to rent the apartment. Complainant cried often and her blood pressure escalated. (Tr. 46-47)

23. Respondent leased the apartment to another tenant in November of 2003 for nine and one-half months.

24. In defense to this action, Respondent claims that he did not rent the apartment to Complainant because she did not initial the lead-based paint agreement. However, many of Respondent's prior tenants leased apartments from him without signing a lead-based paint agreement. (Tr. 170, 197; Respondent's Exhibit F, G, H, I; Complainant's Exhibits 8, 9, 10)

## OPINION AND DECISION

Respondent discriminated against Complainant in violation of the Human Rights Law, when he refused to rent her an apartment after she disclosed her pregnancy.

The Human Rights Law makes it an unlawful discriminatory practice to refuse to lease or otherwise to deny to or withhold from any person ... housing accommodations because of the ... sex ... of such person. Human Rights Law § 296.2(a). Pregnancy has been held to be a form of sex discrimination. *Brooklyn Union Gas Co. v. New York State Human Rights Appeals Bd.*, 41 N.Y.2d 84, 390 N.Y.S.2d 884 (1976).

Complainant has the burden to establish by a preponderance of the evidence that she was discriminated against. To establish a prima facie case, Complainant must demonstrate that she was a member of a protected class, she applied for and was qualified to rent an apartment, she was denied the apartment, and the apartment remained available thereafter. Upon doing so, the burden then shifts to Respondent to show that the rejection was for legitimate, non-discriminating reasons. Complainant is then afforded an opportunity to prove that the reasons offered by Respondent are pretextual. *See Hirschmann v. Hassapoyannes*, 11 Misc.3d 265, 811 N.Y.S.2d 870 (N.Y. Sup. Ct. 2005); *Broome v. Biondi*, F.Supp.2d 211 (S.D.N.Y. 1997).

Complainant has established a prima facie case of discrimination. There is no dispute about Complainant's qualifications or ability to rent the apartment because she was able to pay a greater amount in rent for the apartment to which she moved. There was also no dispute that she is a member of a protected class. An inference of discrimination is raised by the fact that Respondent refused to rent the apartment only after Complainant disclosed her pregnancy to him and the apartment remained available thereafter.

Respondent's argument that he did not rent the apartment to Complainant because she

refused to sign the lead-based paint agreement is without merit because he rented apartments in the past to tenants who failed to sign or initial the agreement. Similarly, Respondent's contention that he would not rent the apartment for a period of less than one year is without merit because he rented the apartment for nine and one-half months to another tenant. Lastly, Respondent's offer to rent the apartment after Complainant found alternative housing was specious. As such, I find Respondent's arguments pretextual.

Complainant credibly testified that Respondent's refusal to rent her the apartment left her homeless with no family in Buffalo. Consequently, she was an "emotional mess." The Commissioner has broad discretion in effecting an appropriate remedy and great deference is afforded the Commissioner's expertise in assessing the severity and extent of complainant's injuries. *See New York City Transit Auth. v. State Div. of Human Rights*, 181 A.D.2d 891, 581 N.Y.S.2d 426 (2d Dept. 1992); *Batavia Lodge No. 196, Loyal Order of Moose v. State Div. of Human Rights*, 35 N.Y.2d 143, 359 N.Y.S.2d 25 (1974). Under these circumstances, a \$20,000 award will effectuate the purposes of the Human Rights Law. *See Cosmos Forms v. State Div. of Human Rights*, 150 A.D.2d 442, 541 N.Y.S.2d 50 (2d Dept. 1989); *School Board of Educ. of the Chapel of the Redeemer Lutheran Church v. NYCHR*, 188 A.D.2d 653, 591 N.Y.S.2d 531 (2d Dept. 1992).

Section 297.4(c)(iv) of the Human Rights Law permits the Division to award punitive damages up to \$10,000 in cases of housing discrimination. In light of the Division's broad mandate to fulfill "the extremely strong statutory policy of eliminating discrimination," a punitive award of \$10,000 will serve to effectuate the purposes of the Human Rights Law. Complainant -- who was six months pregnant, was left with no apartment, had nowhere to go, and had her hired movers bringing a truck load of furniture to an apartment that she was not allowed to rent -- is entitled to

punitive damages. See *Van Cleef Realty Inc. v. State Div. of Human Rights*, 216 A.D.2d 306, 627 N.Y.S.2d 744 (2d Dept. 1995).

Complainant is further entitled to compensatory damages for out-of-pocket expenses she incurred as a result of Respondent's discrimination. Complainant rented an apartment that cost \$50 more per month and lacked amenities, such as a garage and dining room, both of which were available at Respondent's apartment. Accordingly, Complainant is entitled to be compensated for her security deposit in the amount of \$525.00; moving expenses in the amount of \$345.95; and the difference in rent she was required to pay from September of 2003 through February of 2007 in the amount of \$2,100.00, for a total of \$2,970.95.

### **ORDER**

Pursuant to 9 NYCRR § 465.17(c)(3), Adjudication Counsel Matthew Menes has been designated by Commissioner Kumiki Gibson to issue this Final Order. The Adjudication Counsel has not taken any part in the prior proceedings with respect to this case.

On the basis of the foregoing Findings of Fact, Opinion and Decision and pursuant to the provisions of the Human Rights Law, it is hereby

**ORDERED**, that Respondent, its agents, representatives, employees, successors and assigns shall cease and desist from discriminating in its provision of housing; it is further

**ORDERED**, that Respondent, its agents, representatives, employees, successors and assigns shall take the following affirmative actions to effectuate the purposes of the Human Rights Law:

1. Within sixty days of the date of this Final Order, Respondent shall pay to Complainant the sum of \$20,000 without any withholding or deductions, as compensatory damages for mental anguish and humiliation suffered by Complainant as a result of

Respondent's unlawful discrimination. Interest on the compensatory damages award shall start to accrue at the rate of nine percent per annum from the date of this Final Order until the date payment is made.

2. Within sixty days of the date of this Final Order, Respondent shall pay to Complainant punitive damages, without any deductions or withholding whatsoever, in the sum of \$10,000. Interest on the punitive damages award shall start to accrue at the rate of nine percent per annum from the date of this Final Order until the date payment is made.

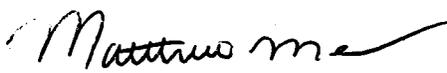
3. Within sixty days of the date of this Final Order, Respondent shall pay to Complainant \$2,970.95 as compensatory damages for out-of pocket expenses. Interest on the compensatory damages award shall start to accrue at the rate of nine percent per annum from the date of this Final Order until the date payment is made.

4. The aforesaid payments shall be in the form of three certified checks made payable to the order of "Julie Orton" at 1221 Astor Commons Place, Brandon, FL 33511, and delivered by certified mail, return receipt requested.

5. Respondent shall simultaneously furnish written proof of the aforesaid payments to Caroline J. Downey, General Counsel, at her office address of One Fordham Plaza, 4<sup>th</sup> Floor, Bronx, New York 10458 by first-class mail, and shall cooperate with representatives of the Division during any investigation into the compliance with the directives contained in this Order.

DATED: September 26, 2007  
Bronx, New York

STATE DIVISION OF HUMAN RIGHTS

  
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MATTHEW MENES  
Adjudication Counsel